



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS-2023-0019]

Acquisition of Items for Which Federal Prison Industries Has a Significant Market Share

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD is publishing the updated annual list of product categories for which the Federal Prison Industries' share of the DoD market is greater than five percent.

DATES: May 25, 2023.

FOR FURTHER INFORMATION CONTACT: William Granfield, 978-799-0906.

SUPPLEMENTARY INFORMATION:

On November 19, 2009, a final rule was published in the **Federal Register** at 74 FR 59914, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6 to implement section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater than five percent, based on the most recent fiscal year data available. Product categories on the current

list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with DFARS 208.602-70.

The Principal Director, Defense Pricing and Contracting (DPC), issued a memorandum dated April 25, 2023, that provided the current list of product categories for which FPI's share of the DoD market is greater than five percent based on fiscal year 2022 data from the Federal Procurement Data System. The product categories to be competed effective May 25, 2023, are the following:

- 7125 (Cabinets, Lockers, Bins, and Shelving)
- 7210 (Household Furnishings)
- 8405 (Outerwear, Men's)
- 8410 (Outerwear, Women's)
- 8415 (Clothing, Special Purpose)
- 8420 (Underwear and Nightwear, Men's)
- 8465 (Individual Equipment)
- 9905 (Signs, Advertising, Displays, and Identification Plates)

The DPC memorandum with the current list of product categories for which FPI has a significant market share is posted at <https://www.acq.osd.mil/dpap/policy/policyvault/USA000257-23-DPC.pdf>

The statute, as implemented, also requires DoD to—

(1) Include FPI in the solicitation process for these items.

A timely offer from FPI must be considered and award procedures

must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v);

(2) Continue to conduct acquisitions, in accordance with FAR subpart 8.6, for items from product categories for which FPI does not have a significant market share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery; and

(3) Modify the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

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